IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELALTE SIDE

WRIT PETITION NO.2995 OF 1998

Rajendra Tulshiram Ajage & Ors. ...Petitioners.

Vs.

Narayan Namdeo Udar. ...Respondent.

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Mr.P.B.Shah for the Petitioners.

Mr.V.Z.Kankaria for the Respondent.

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CORAM : DR.D.Y.CHANDRACHUD, J.

June 13, 2006.

P.C. :

A decree for eviction has been passed by the Civil Judge, Junior Division, Nasik, on the ground of default in the payment of rent. The decree has been confirmed in appeal by the Additional District Judge, Nasik.

The notice was issued on 23rd November 1975 claiming arrears of rent from 1st February 1973. The notice was served on the tenant on 1st December 1975. The tenant did not comply with the notice of

demand nor for that matter was an application for fixation of standard rent instituted within a period of one month before the Court. The defence of the tenant appears to have been that a part of the suit premises had earlier been surrendered and thereafter the rent was agreed to be reduced from Rs.13/- to Rs.4/- per month. The Appellate Court has noted in its judgment that during the course of the evidence, the Defendant came out with the case that upon the surrender of the premises, the rent was fixed at Rs.4/- and that a writing had been executed by the landlord. The further case sought to be established was that there was a theft in the house in 1979 when the document was lost. The Appellate Court noted that no such case of the existence of a new agreement in writing between the parties was made out in the written statement.

Section 12(3)(a) of the Bombay Rent Act as it then stood, provided that where the rent is payable by the month and there is no dispute regarding the amount of standard rent or permitted increases, if such rent or increases are in arrears for a period of six months or more and the tenant neglects to make the payment thereof until the expiration of a period of one month after the notice of demand, the Court may pass a decree for

eviction in any such suit for recovery of possession. The explanation provided that in any case, where there is dispute as to the amount of standard rent or permitted increases recoverable under the Act, the tenant shall be deemed to be ready and willing to pay the amount if before the expiry of the period of one month after the notice of demand he makes an application to the Court to fix the standard rent and thereafter pays or tenders the amount of rent or permitted increases specified in the order made by the Court.

In the present case, it is an admitted position that upon receipt of the notice of demand on 1st December 1975, no application for fixation of standard rent was moved within a period of one month. Therefore, even if as is now submitted before the Court, a dispute was sought to be raised in regard to the standard rent on the ground of the alleged reduction in the rant, it was necessary to file an application for fixation of standard rent within one month which was never done. In these circumstances, there has been a manifest non-compliance of the provisions of Section 12(3)(a) by the tenant. The decree for eviction on the ground of arrears does not, therefore, suffer from any infirmity.

The Petition is dismissed. However, in my view the request of the tenant for sufficient time to vacate should be granted. Time to vacate the premises is granted until 31st December 2006 subject to the filing of the usual undertaking within four weeks. The undertaking shall, inter alia, also provide that all the arrears of rent and future compensation payable until 31st December 2006 shall be deposited.

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